

Remarks

After entry of this Amendment, claims 2-4, 9-14, and 16-18 remain pending in the application. Claims 2-4, 9, and 11-14 are currently amended. Claims 1, 5-8, and 15 are cancelled in this Amendment. Claim 10 remains unchanged. Claims 16-18 have been added. No new matter has been introduced. Support for the new and amended claims can be found throughout the subject application.

Allowable Subject Matter

Claim 8 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for the allowance of this dependent claim. In accordance with this allowance, Applicant has added independent claim 16. Specifically, claim 16 includes the features of previous independent claim 1 and allowed dependent claim 8 along with intervening dependent claims 4 and 7. New independent claim 16 is therefore believed to be in condition for allowance. New claims 17 and 18 are also believed to be in condition for allowance as these claims depend from the allowable unique and non-obvious features of independent claim 16.

Specification

The Examiner suggested adding headings within the specification as provided in 37 C.F.R. 1.77(b). In compliance with the 37 C.F.R. 1.77(b), Applicant has amended the specification to include the applicable headings.

Multiple Dependency Objections

Claims 13-15 stand objected to under 37 C.F.R. 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. With regards to this

objection, claims 13 and 14 are currently amended such that no multiple dependent claim is dependent upon another multiple dependent claim. Claim 15 has been cancelled for reasons other than this objection. Therefore, Applicant respectfully submits that this multiple dependency objection has been overcome.

§112 Rejections

Claims 4-8 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. It appears that the Examiner also meant to reject claim 1 under §112 as the Examiner specifically addresses claim 1 in under this section.

The Examiner contends that claim 1 includes the phrase “to allow it” and claim 4 includes the phrase “it comprises fins” which renders these claims indefinite. The Examiner also contends that claims 6 and 7 do not have sufficient antecedent basis for the phrase “the cheeks”.

Applicant has clarified the claim language of claim 4 by removing the word “it” and Applicant has cancelled claims 1, 6, and 7 for reasons other than this §112 rejection. Therefore, Applicant submits that these §112 rejections have been overcome.

§103 Rejections

Claims 1-4 and 9-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Stoynoff et al. (US Publication No. 2003/0075307). Claims 5-6 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Stoynoff et al. in view of Sugimoto (US Patent No. 6,408,939; the ‘939 patent). Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Stoynoff et al. in view of Sugimoto et al. (US Patent No. 5,992,514; the ‘514 patent).

As a preliminary matter, the Examiner fails to set forth how Stoynoff et al. would make original independent claims 1 and 9 of the present invention obvious which

left the Applicant unclear on how the Examiner arrived at the current §103 rejections which is discussed further below. Even in spite of the lack of clarity of this rejection, Applicant has amended and cancelled claims of the present invention to advance prosecution of this application. Specifically, Applicant has incorporated features of original claims 1, 5, and 6 into current independent claim 4. Therefore, Applicant has cancelled claims 1, 5, and 6. In addition, Applicant has incorporated features of original claim 6 into currently amended independent claim 9.

As mentioned above, Applicant is unclear on how the Examiner arrived at the current §103 rejections. As the Examiner is likely aware, according to C.F.R. §1.104(b), “[t]he examiner's action will be complete as to all matters.” Specifically, on page 4 of the present Office Action, the Examiner contends that the presently claimed invention is obvious in light of the Stoynoff et al. However, the Examiner has failed to set forth why the presently claimed invention would be obvious in light of Stoynoff et al. Notably, the Examiner generally discusses Stoynoff et al. in light of some of the features as set forth in the original independent and dependent claims of the present invention without connecting why Stoynoff et al. would make the independent claims obvious. Specifically, the Examiner only sets forth reasoning for supporting an obviousness argument with regards to dependent claim 3 of the presently claimed invention. Hence, the Examiner has failed to set forth for the Applicant what features Stoynoff et al. fails to disclose of the independent claims of the present invention and why Stoynoff et al. would make the independent claims obvious. Hence, Applicant is unclear on what features of Stoynoff et al. the Examiner is relying on to establish the current §103 rejection. For these reasons, Applicant is required to speculate and assume what the Examiner's intentions and meanings are in the present Office Action. Therefore, Applicant contends that this Office Action is incomplete as to all matters and the rejections to the claims should be withdrawn or, at a minimum, clarified.

As the Examiner is also likely aware, despite the revision to MPEP §2100 largely in response to *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727 (2007), a prior art combination

must still teach or suggest all the claim limitations to establish a *prima facie* case of obviousness. The Board of Patent Appeals and Interferences recently confirmed this principle. *See Ex parte Wada and Murphy*, Appeal 2007-3733 (Emphasis Added). Specifically, when determining whether a claim is obvious, an Examiner must make “a searching comparison of the claimed invention – including all its limitations – with the teaching of the prior art.” *In re Ochaiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

Applicant contends that Stoynoff et al. either independently or in combination with the ‘939 or ‘514 patents fail to disclose, teach, or suggest all of the features of independent claims 4 and 9, as presently amended. For example, Applicant contends that Stoynoff et al. fails to disclose, teach, or suggest the features of amended claims 4 and 9 that recite that the tubes of the exchangers are offset from one another in a direction orthogonal to the tubes and the cheeks have an equivalent offsetting level between the first and second exchangers. Even the Examiner agrees with the Applicant regarding these features of amended claims 4 and 9. Specifically, the Examiner states on page 5 of the Office Action, that Stoynoff et al. fails to disclose “the tubes of the heat exchanger are offset from one another in a direction orthogonal to the tube and the cheeks have an equivalent offsetting level between the first and second heat exchangers.” Further, Applicant contends that there is no teaching, suggestion, or motivation in Stoynoff et al. to offset the tubes or the cheeks. Hence, Applicant respectfully submits that Stoynoff et al. cannot support an obviousness rejection in light of independent claims 4 and 9 as presently amended.

With regard to the ‘939 patent, the Examiner contends that the ‘939 patent discloses “the tubes of the heat exchanger are offset from one another in a direction orthogonal to the tube and the cheeks have an equivalent offsetting level between the first and second heat exchangers.” (Emphasis Added). The Examiner contends that the

cheeks are reference number 300 as shown in Figures 5 and 6 of the '939 patent. When referring to the embodiment of Figure 5 of the '939 patent, only one of the alleged cheeks 300 are offset. Claims 4 and 9 of the presently claimed invention include that the cheeks have an equivalent offsetting level between the first and second exchangers. In other words, both of the cheeks of the present invention are offset. Further, the disclosure of the '939 patent for the embodiment of Figure 5 fails to teach, suggest, or motivate one to include both cheeks being offset as recited in amended independent claims 4 and 9 of the present invention.

In addition, as shown in Figure 5 of the '939 patent, the alleged offsetting of the tubes 110 for the radiator 100 relative to the tubes 210 of the condenser 200 varies such that there fails to be a consistence offset distance between the tubes 110, 210. Therefore, by having a varying offset distance between the tubes 110, 210, it is likely that the tubes 110, 210 will eventually align as suggested in Figure 5 (see the tubes 110, 210 near reference number H₃, which nearly align). Further, the varying offset of the tubes 110 of the first exchanger and the tubes 210 of the second exchanger of Figure 5 fails to meet the features of independent claims 4 and 9 of the present invention because the cheeks of the presently claimed invention have an equivalent offsetting level between the first and second exchangers. In other words, as shown in Figure 7 of the presently claimed invention, the offsetting of the cheeks 40 are the same as the offsetting of the tubes 5 of the first heat exchanger 1 relative to the tubes 10 of the second heat exchanger 2. In the '939 patent, clearly the embodiment of Figure 5 fails to disclose even one cheek having an equivalent offsetting level between the first and second exchangers because the offsetting varies between the tubes 110 of the first heat exchanger and the tubes 210 of the second heat exchanger. Further, the disclosure of the '939 patent for the embodiment of Figure 5 fails to teach, suggest, or motivate one to include cheeks having an equivalent offsetting level as recited in amended independent claims 4 and 9 of the present invention.

When referring to embodiment of Figure 6 of the ‘939 patent, the tubes 110, 210 align with each other. In other words, Figure 6 fails to disclose the tubes being offset from one another in a direction orthogonal to the tubes as presently claimed in independent claims 4 and 9. Further, the disclosure of the ‘939 patent for the embodiment of Figure 6 fails to teach, suggest or motivate one to offset the tubes. Instead, the embodiment of Figure 6, column 6, lines 10-13 specifically discloses that the “a distance between centers of the adjacent radiator tubes 110, . . . is set to be equal to a distance between centers of the adjacent condenser tubes 210.” (Emphasis Added). Hence, the embodiment of Figure 6 of the ‘939 patent actually teaches away from the tubes being offset from one another as presently claimed in amended claims 4 and 9. Therefore Applicant respectfully submits that the ‘939 patent cannot support an obviousness rejection.

Further, for example, the ‘939 patent fails to disclose before assembling, the strip comprises a zone of weakness able to allow the strip to be parted into a first element comprising the first heat-exchange zone and a second element comprising the second heat-exchange zone with the first and second elements of the fins, designed separated from each other, and after assembling, being associated with the tubes of the first and second heat exchanger respectively, as presently claimed in amended independent claim 4. In other words, the ‘939 patent fails to disclose a zone of weakness to allow the strip to be parted into first and second elements and after assembly being associated with the tubes. In addition, the ‘939 patent fails to teach, suggest, or motivate one to include a zone of weakness to allow the strip to be parted into first and second elements and after assembly being associated with the tubes. Therefore, Applicant respectfully submits that the ‘939 patent cannot support an obviousness rejection. Further, Applicant respectfully submits that Stoynoff et al. in combination with the ‘939 patent cannot support an obviousness rejection because even when these references are combined, these references still fail to disclose, teach, or

suggest independent claims 4 and 9 as presently amended. As such, Applicant contends that the §103 rejections have been overcome.

Now referring to the '514 patent, this reference fails to disclose, teach, or even suggest numerous features of independent claims 4 and 9 as presently amended. For example, the '514 patent fails to disclose, teach, or suggest a strip comprising a zone of weakness able to allow the strip to be parted into a first element comprising the first heat-exchange zone and a second element comprising the second heat-exchange zone with the first and second elements of the fins, designed separated from each other, and after assembling, being associated with the tubes of the first and second heat exchanger respectively, as presently claimed in amended independent claim 4. As another example, the '514 patent also fails to disclose, teach, or suggest the tubes of the exchangers being offset from one another in a direction orthogonal to the tubes and the cheeks have an equivalent offsetting level between the first and second exchangers, as presently claimed in amended independent claims 4 and 9. As yet another example, the '514 patent fails to disclose, teach, or suggest the strips of sheet metal being weakened in such a way as to limit a first heat-exchange zone intended to be associated with the tubes of the first exchanger and a second heat-exchange zone intended to be associated with the tubes of the second heat exchanger, this weakening leaving a residual link remaining between the first heat-exchange zone and the second heat-exchange zone, and the strips of sheet metal are associated with the tubes of the exchangers, the residual links between the first heat-exchange zone and the second heat-exchange zone are broken so as to separate the zones entirely, as presently claimed in amended independent claim 9. Hence, Applicant respectfully submits that the '514 patent cannot support an obviousness rejection in light of independent claims 4 and 9 as presently amended. Further, Applicant respectfully submits that Stoynoff et al. in combination with the '514 patent cannot support an obviousness rejection because even when these references are combined, these references still fail to disclose, teach, or suggest independent claims 4 and 9 as presently amended. As such, Applicant contends that the

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§103 rejections have been overcome.

Summary

Applicant believes the application is now in condition for allowance, which allowance is respectfully solicited. Applicant believes that no additional fees are required. In any event, however, the Commissioner is authorized to charge our Deposit Account No. 08-2789 in the name of Howard & Howard Attorneys PLLC for any additional fees or credit the account for any overpayment.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

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